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 Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re: USA COMMERCIAL MORTGAGE COMPANY, Debtor.	Case No. BK-S-06-10725 LBR Case No. BK-S-06-10726 LBR Case No. BK-S-06-10727 LBR
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In re: USA CAPITAL REALTY ADVISORS, LLC, Debtor.	Case No. BK-S-06-10728 LBR Case No. BK-S-06-10729 LBR
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In re: USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, Debtor.	Chapter 11 Jointly Administered Under Case No. BK-S-06-10725 LBR
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In re: USA CAPITAL FIRST TRUST DEED FUND, LLC, Debtor.
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In re: USA SECURITIES, LLC, Debtor.
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**MOTION TO REJECT PERSONAL  
 PROPERTY LEASES**

Affects:
<input type="checkbox"/> All Debtors
<input checked="" type="checkbox"/> USA Commercial Mortgage Company
<input type="checkbox"/> USA Capital Realty Advisors, LLC
<input type="checkbox"/> USA Capital Diversified Trust Deed Fund, LLC
<input type="checkbox"/> USA Capital First Trust Deed Fund, LLC
<input type="checkbox"/> USA Securities, LLC

Date: September 28, 2006  
 Time: 9:30 a.m.

USA Commercial Mortgage Company, Debtor and Debtor-in-Possession ("Debtor" or "USACM"), by and through its counsel, Jeanette E. McPherson, Esq. of Schwartzer & McPherson Law Firm, hereby files its Motion To Reject Personal Property Leases. This Motion is made and based upon 11 U.S.C. § 365, the Points And Authorities set forth herein, the pleadings on file, and any argument to be presented at the time of hearing on this Motion. As set forth herein, USACM seeks approval to reject the unexpired leases listed on the Schedule of Leases attached as Exhibit A to Exhibit 1.

## POINTS AND AUTHORITIES

### Facts

1. The Debtor filed its voluntary petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code on April 13, 2006. The Debtor continues to operate its business and possess its property as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

2. USACM is a party to numerous unexpired personal property leases (collectively, the "Leases"). A "Schedule of Leases" which contains a listing of the Leases and their most relevant terms is attached as Exhibit A to Exhibit 1.

3. The Debtor seeks authorization through this Motion to reject each of the Leases listed on the Schedule of Leases.

4. The Debtor seeks to reject the Leases in its business judgment as they do not benefit the Debtor or its creditors.

5. The Leases are for the lease of equipment and property that is not being used by the Debtor.

6. The Debtor has not made the payments under the Leases since the Petition Date.

### Memorandum of Law

Section 365(a) the Bankruptcy Code provides that a debtor-in-possession, with court approval, may reject any executory contract or unexpired lease. Although the Bankruptcy Code does not set forth guidelines for determining whether to approve a debtor-in-possession's decision to assume an executory contract or unexpired lease, the courts have overwhelmingly applied a "business judgment" test when reviewing such a decision. See, e.g., Group of Inst. Investors v.

1 Chicago, M., St. P. & Pac. R.R., 318 U.S. 523, 550, 63 S.Ct. 727, 742-43 (1943); NLRB v.  
 2 Bildisco & Bildisco, 465 U.S. 513, 523, 104 S.Ct. 1188, 1194 (1984); Lubrizol Enters., Inc. v.  
 3 Richmond Metal Finishers, Inc. (In re Richmond Metal Finishers, Inc.), 756 F.2d 1043, 1046-47  
 4 (4th Cir.1985), cert. denied, 475 U.S. 1057 (1986); Carey v. Mobil Oil Corp. (In re Tilco, Inc.),  
 5 558, F.2d 1369, 1372 (10th Cir. 1977); Robertson v. Pierce (In re Chi-Feng Huang), 23 B.R. 798,  
 6 800 (B.A.P. 9th Cir. 1982).

7 A debtor-in-possession satisfies the "business judgment" test when it reasonably decides,  
 8 in good faith, that rejection will benefit its estate. In re Chipwich, Inc., 54 B.R. 427, 430-31  
 9 (Bankr. S.D.N.Y. 1985); Commercial Fin., Ltd. v. Hawaii Dimensions, Inc. (In re Hawaii  
 10 Dimensions, Inc.), 47 B.R. 425, 427 (D. Haw.1985) ("Under the business judgment test, a court  
 11 should approve a debtor's proposed assumption if such assumption will benefit the estate.")  
 12 Bankruptcy courts generally approve a debtor-in-possession's decision to assume a lease or  
 13 executory contract absent either: (a) a showing of bad faith or abuse of discretion; or (b) a  
 14 demonstration that assumption will not benefit the estate or its creditors. Chipwich, 54 B.R. at  
 15 430-31.

16 USACM requests approval of its decision to reject the Leases. USACM does not use the  
 17 equipment or property that is the subject of the Leases. Thus, USACM seeks to reject the Leases  
 18 because the assumption of the Leases will not benefit USACM or its creditors.

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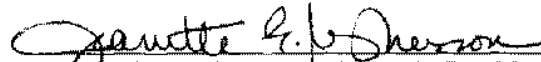
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CONCLUSION

Based upon the foregoing, USACM respectfully requests that this Motion To Reject Personal Property Leases be granted, and that each of the leases listed on the Schedule of Leases attached as Exhibit A to Exhibit 1 be deemed rejected.

DATED this 21 day of August, 2006.

  
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## EXHIBIT 1

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Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
Debtor.

Case No. BK-S-06-10725 LBR

Case No. BK-S-06-10726 LBR

Case No. BK-S-06-10727 LBR

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
Debtor.

Case No. BK-S-06-10728 LBR

Case No. BK-S-06-10729 LBR

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
Debtor.

Chapter 11

Jointly Administered Under

Case No. BK-S-06-10725 LBR

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
Debtor.

In re:  
USA SECURITIES, LLC,  
Debtor.

**DECLARATION OF SUSAN M. SMITH IN  
SUPPORT OF MOTION TO REJECT  
PERSONAL PROPERTY LEASES  
[AFFECTS USA COMMERCIAL  
MORTGAGE COMPANY]**

Affects:  
☐ All Debtors  
☒ USA Commercial Mortgage Company  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC  
☐ USA Securities, LLC

Date:

Time:

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Tel: (702) 228-7590 - Fax: (702) 892-0122

1 I, Susan M. Smith, declare, verify, and state as follows:

2 1. I am over the age of 18, have personal knowledge of the facts herein, and am  
3 competent to testify thereto.

4 2. I am a Senior Vice President at Mesirow Interim Financial Management. I have  
5 personal knowledge of the facts stated herein and make this Declaration in support of the Motion  
6 To Reject Personal Property Leases.

7 3. USA Commercial Mortgage ("USACM" or the "Debtor") filed its voluntary  
8 petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code on April 13,  
9 2006 (the "Petition Date"). The Debtor continues to operate its business and possess its property  
10 as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

11 4. USACM is a party to numerous unexpired personal property leases (collectively,  
12 the "Leases"). I have reviewed the Leases and a listing of these Leases is set forth in the  
13 "Schedule of Leases" attached hereto as **Exhibit A**.

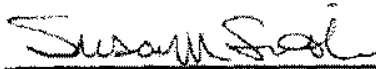
14 5. The Debtor seeks authorization to reject each of the Leases listed on the Schedule  
15 of Leases.

16 6. The Debtor seeks to reject the Leases in its business judgment as they do not  
17 benefit the Debtor or its creditors.

18 7. The Leases are for the lease of equipment and property that is not being used by the  
19 Debtor.

20 8. The Debtor has not made the payments under the Leases since the Petition Date.

21 I declare under penalty of perjury under the laws of the United States of America that the  
22 foregoing is true and correct to the best of my knowledge, information, and belief.

23  
24 

25 SUSAN M. SMITH  
26  
27  
28

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# EXHIBIT A

## Schedule of Leases

See Attached



## SCHEDULE OF LEASES

No.	Lessor	Lease No.	Origination Lease Date	Lease Term	Payment Terms	Equipment	Security Deposit Payment/ Advance Payment
1	Technology Investment Partners	030122-000	2/17/04	36 mos.	\$2,454.87/mo. with purchase option	Computer Equip.	First and Last mos. = \$4,909.74
2	Marlin Leasing	208723	Appr. 01/08/03	60 mos.	\$1,194.33 + taxes/mo. with purchase option	Computer Equip.	\$2,388.66
3	Toshiba Financial Services	7171537-001	11/06/02	48 mos.	\$2,107.54 + taxes/mo. with purchase option	Computer Equip.	\$0.00
4	Hewlett-Packard	500147DF	07/03/02	36 mos.	\$4,650.25 + taxes/mo. with purchase option	Computer Equip.	Approx. Advance Payment = \$4,953.64
5	Information Leasing Corporation	404230002	12/05/02	60 mos.	\$2,203.83/mo. with purchase option	Electronic Equip.	First and Last mos. = \$4,407.66
6	SuccessLease	4151232-002	10/24/02	48 mos.	\$2,008.78 + taxes/mo. with purchase option	Computer Equip.	\$0.00
7	GE Capital Corporation	4162322-001	11/21/02	60 mos.	\$1,931.30 + taxes/mo. with purchase option	Computer Equip.	\$3,862.60
8	ABB Business Finance	App. No.: 99756	11/21/02	60 mos.	\$2,051.69 + taxes/mo. with purchase option	Computer Equip.	Two mos. = \$4,103.38
9	CapitalWerks, LLC	1000-12309	08/12/02	36 mos.	3.343% x equipment cost funded + taxes/mo.	Computer Equip.	\$37,500.00 plus 2 x 3.343% x funded equipment cost
10	Bankers Leasing Company (Banleaco)	0032327	12/12/02	60 mos.	\$1,641.00/mo. with purchase option	Computer Equip.	\$0.00
11	Balboa Capital	46702-002	06/03/04	36 mos.	\$1,019.67 + taxes/mo. with purchase option	Computer Equip.	\$2,039.34
12	Citicorp Vendor Finance, Inc.	3095670	11/13/01	60 mos.	\$998.09 + taxes/mo. with purchase option	Copier/Printer	\$0.00
13	Ascom Hasler Leasing	4162481-001	11/18/02	36 mos.	\$196.27/mo.	Office Equip.	Last mo. = \$196.27
14	IOS Capital	99903C	05/22/01	60 mos.	\$1,881.00 + taxes/quarterly	Copier	\$0.00
15	IOS Capital	15677A	04/30/03	60 mos.	\$368.00 + taxes/mo.	Copier/Printer	\$0.00
16	IOS Capital	1117952	10/29/02	60 mos.	\$469.00 + taxes/mo.	Copier	\$0.00
17	Key Equipment Finance	N/A	03/13/03	48 mos.	\$395.00 + taxes/mo. with purchase option	Computer and Office Equip.	\$0.00
18	Sterling National Bank	604-5345	04/28/03	60 mos.	\$995.75/mo. with purchase option	Office Equip. and Office Furniture	First and Last mos. = \$1,991.50